REMARKS/ARGUMENTS

Claims 1-4, 6-8, 19, 21-25 and 27-34 are pending in the application. Claims 5, 9-18, 20 and 26 were previously cancelled. Through this Amendment, claim 6 has been amended. No new matter has been added. As explained in more detail below, Applicants submit that pending claims 1-4, 6-8, 19, 21-25 and 27-34 are in condition for allowance and respectfully request such action.

Interview Summary

This Interview Summary is filed in relation to the Examiner Interview conducted on July 16, 2010 via telephone. Applicants wish to thank Examiner Chowdhury for her time during the Examiner's interview, during which the rejections under 35 USC §102 and §103 were discussed. Examiner Chowdhury requested that Applicants place the arguments in the next-filed Response. Applicants wish to thank Examiner Chowdhury for spending the time preparing and conducting the interview.

The arguments against the rejections are provided below.

Claim Amendments

Claim 6 has been amended to remove extraneous language. The amendment to claim 6 is not made in view of any prior art or rejection relying upon any art, including the art currently cited against claim 6. In fact, as described below, Applicants respectfully submit that claim 6 is allowable over the art of record for at least reasons unrelated to the amended element.

In view of the foregoing, Applicants respectfully request entry of the amendment.

Rejections under 35 U.S.C. 102

Claims 1 and 2 are rejected under 35 U.S.C. § 102(e) as being anticipated by Viswanathan (US 5936659). Applicants respectfully traverse the rejection in view of the Remarks below.

Viswanathan does not disclose the subject matter of independent claim 1. Specifically, independent claim 1 recites:

> [a] manager, [that] <u>in response to</u> a frequently requested video asset <u>becoming infrequently requested</u>, is configured to select and transmit the infrequently requested video asset to at least one secondary partition of at least one server.

(emphasis added).[1] The Office Action asserts that "Viswanathan teaches a three tiered video server in which the dozen or so most popular releases will always be loaded into [the] first tier." (Office Action dated June 22, 2010, p. 2). In this regard, the Office Action asserts that "[i]t is clear from referring to col. 2, lines 23-35 [of Viswanathan], that the movies are transferred from one tier to another based upon user request." (*Id.*). Applicants respectfully disagree with the Office's interpretation. Rather, as explained below, Viswanathan's determinations are based upon <u>an anticipation</u> of requests rather than actual "requests" as recited in the pending claims.

First, when describing the three-tiered system, Viswanathan expressly states that "it would be appropriate to load [the movie] onto the hard drives in tier 2 ***in anticipation of the increase in requests***." (Viswanathan, Col. 2, lines 42-43, emphasis added). Thus, according to Viswanathan's own teachings the transfer of any movies between the tiers of Viswanathan is not "in response to...becoming frequently [or infrequently] requested," as recited in independent claims 1, but rather based upon anticipated requests.

For at least this reason, Applicants respectfully submit that Viswanathan, alone or in combination with any other art of record, does not teach, disclose, or suggest the subject matter of independent claim 1. The deficiencies of Viswanathan, namely the lack of any teaching, disclosure, or suggestion of the recited transfer of video assets "in response to...becoming frequently [or infrequently] requested" are not cured by any other art of record. Therefore, Applicants respectfully submit that claim 1 is allowable. Claim 2 depends from claim 1, and is allowable for at least the same rationale. Applicants further respectfully submit that the claim 2 is also allowable for the novel limitations

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[1] Claim 1 further recites: wherein the manager, <u>in response</u> to a frequently requested video asset <u>becoming infrequently requested</u>, is configured to select and transmit the infrequently requested video asset to at least one secondary partition of at least one server. (emphasis added).

recited therein. Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection in regards to claims 1 and 2.

In rebuttal of this argument, the Office Action asserts that the above-cited text describes a single example of the holiday movie – "The Christmas Story" – and that "[h]oliday movies make up a small fraction of movies." (Office Action dated June 22, 2010, p. 2). Applicants respectfully submit that, regardless of whether a video asset is a holiday movie or not, Viswanathan is silent regarding any example contrary to the above-example, in which "it would be appropriate to load [the movie] onto the hard drives in tier 2 *in anticipation of the increase in requests*." (Viswanathan, Col. 2, lines 42-43, emphasis added). Moreover, as explained immediately below, further teachings of Viswanathan make it clear that Viswanathan cannot teach, disclose, or suggest the subject matter of claims 1 or 2.

First, Applicants respectfully draw attention to Viswanathan's requirement that the most popular movies are always stored on the top tier. Specifically, "the dozen or so most popular releases **will always be** loaded into the first tier." (Viswanathan, Col. 2, ll. 24-26, emphasis added). Therefore, if the Office Action is correct that Viswanathan's movies are moved between the tiers based upon actual "requests," then new movies could never be initially loaded into the top tier because the new movie would not, by definition, have any user requests yet. Rather, the new movie would have to be stored, at least initially, in the third (bottom) tier or no tier at all. Therefore, according to Viswanathan's own teachings, none of the "most popular releases" could be movies that are initially stored on the three-tiered server. As explained below, this is important for several reasons.

As required by Viswanathan, once a movie is initially loaded into to the third tier, it must be stored alone (not with another other videos) on a tape. Specifically, Viswanathan explicitly states that "[t]he third tier, reserved for lower-demand movies requested only occasionally, would be a separate machine--a 'video jukebox' with tens of thousands of 8-millimeter digital tapes, **each containing a single movie**." (Viswanathan, Col. 2, ll. 31-35, emphasis added). Viswanathan continues to teach that "[w]hen a viewer

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requests an archived title [in the third tier], a robotic arm would **grab the cassette** and **load it into the video servers memory bank**. (Viswanathan, Col. 2, ll. 35-37, emphasis added). Therefore, because the entire cassette is loaded onto the memory bank (presumably the second tier of the video server), attempting to store more than one movie per cassette (against Viswanathan's own teachings) would result in loading each and every movie on the cassette to the server's memory bank. Doing so would go against the Office's assertion that any movement of movies would be the result of an actual "request."

Thus, returning to the requirement of Viswanathan's that each movie initially stored on the third tier is separately stored on a cassette, one can presume that once a movie (for example, located on the second tier) becomes less "requested," the movie would be deleted as opposed to transmitted back to the third tier. Specifically, the movie would already be loaded onto a single tape, and attempting to store two movies on a single tape of the third tier would violate Viswanathan's own definition of the third tier. Indeed, Viswanathan is silent regarding the movement of "It's a Wonderful Life" following the holiday season and rather must delete movies from the second tier that are no longer anticipated to be requested.

For at least this reason, Applicants respectfully submit that Viswanathan, alone or in combination with any other art of record, does not teach, disclose, or suggest the subject matter of independent claim 1. The deficiencies of Viswanathan, namely the lack of any teaching, disclosure, or suggestion of the recited transfer of video assets "in response to…becoming frequently [or infrequently] requested" are not cured by any other art of record. Therefore, Applicants respectfully submit that claim 1 is allowable. Claim 2 depends from claim 1, and is allowable for at least the same rationale. Applicants further respectfully submit that the claim 2 is also allowable for the novel limitations recited therein. Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection in regards to claims 1 and 2.

Rejections under 35 U.S.C. 103

Claims 3, 19 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Viswanathan (US 5936659) in view of Ueno (US 6438596). Applicants respectfully traverse the rejection in view of the Remarks below.

Claim 3 depends from claim 1. As discussed above, Viswanathan does not teach, suggest, or disclose the subject matter of claim 1. Neither Ueno nor any other art of record cures the deficiencies of Viswanathan. Therefore, Applicants respectfully submit that claim 3 is allowable for at least the same reasons set forth above in relation to Claim 1. Similarly, claim 19 is directed towards a method that recites, *inter alia*: "*in response to* an infrequently requested video asset *becoming frequently requested*, selecting and transmitting the frequently requested video asset to at least one primary partition of at least one server." (emphasis added). Therefore, Applicants respectfully submit that claim 19 is allowable for at least the same reasons set forth above in relation to claim 1. Because claim 21 depends from claim 19, it is allowable for at least the same rationale. Applicants further respectfully submit that claim 21 is also allowable for the novel limitations recited therein.

Claims 4, 7-8, 22-25 and 28-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Viswanathan and Ueno in view of Sato. Applicants respectfully traverse the rejection and request reconsideration in view of the Remarks below.

Claims 4 and 7-8 depend from independent claim 1 and claims 22-24 depend from independent claim 19. As discussed above, Viswanathan does not teach, suggest, or disclose the subject matter of claims 1 or 19. Neither Ueno, Sato, nor any other art of record, cure the deficiencies of Viswanathan. Applicants, therefore, respectfully submit that claims 4, 7-8, 22-24 are allowable for at least the same reasons set forth above in relation to claims 1 and 19. Applicants further respectfully submit that claims 4, 7-8, and 22-24 are also allowable for the novel limitations recited therein.

Regarding independent claim 25, the claim recites a manager that "in response to an infrequently requested video asset becoming frequently requested, is configured to select and transmit the frequently requested video asset to at least one primary partition of at least one server." As discussed above in relation to claims 1 and 19, this element is entirely missing from Viswanathan and Ueno. Applicants respectfully submit that neither Sato nor any other art of record, either individually or in combination, cures this deficiency. Claims 28-34 depend from independent claim 25 and, therefore, are allowable for at least the same reason. Applicants further respectfully submit that claims 28-34 are also allowable for the novel limitations recited therein.

Claims 6 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Viswanathan, Ueno and Sato as applied to claim 1 above, and further in view of Starnes (US 6510469). Applicants respectfully traverse the rejection, and therefore, respectfully request reconsideration and withdrawal of the rejection.

Claim 6 depends from claim 4. Claim 4 recites:

> a content manager configured to **receive the request for the video asset and determine whether the requested video asset is stored locally** in the storage medium of that local server at which the video asset request is received or stored remotely in the storage medium of the remote server; [and]
> a stream session manager configured to direct **a server to distribute streams of video assets to user equipment requesting the video assets**
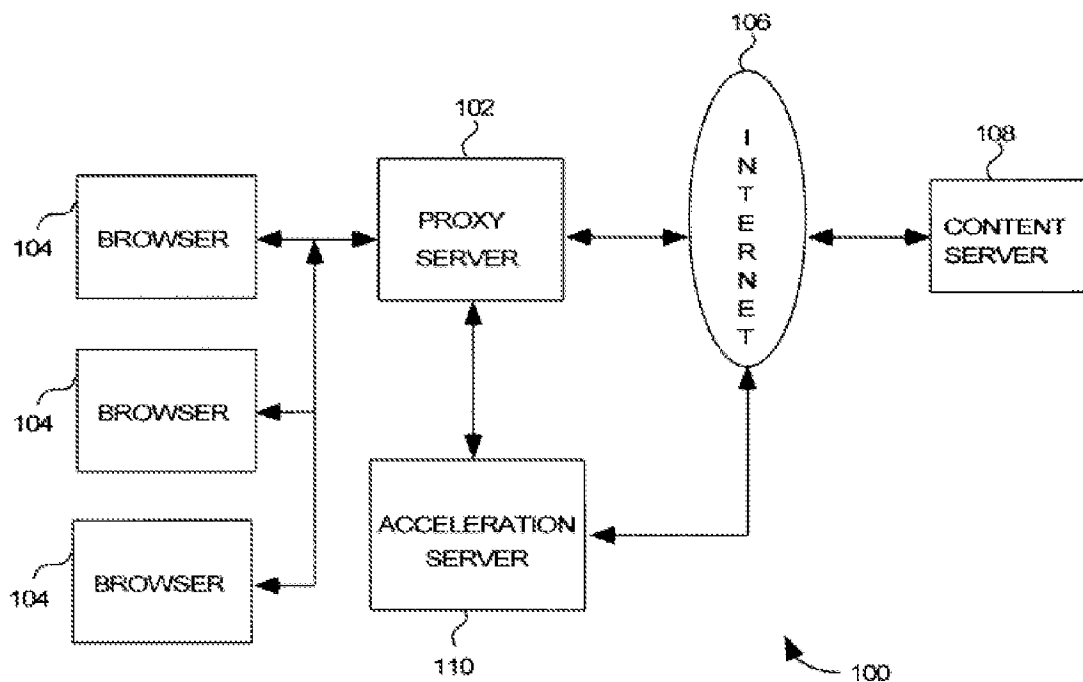
(emphasis added; similarly, claim 27 recites that "the content manager, in response to determining that the requested video asset is stored locally, is configured to notify the stream session manager to deliver the requested video asset to a local server for transmission by the local server to the requesting user equipment)."

Starnes does not disclose the subject matter of claims 6 and 27 because the alleged "video asset" of Starnes is actually retrieved from a remote location, with portions thereof locally stored. Specifically, only some objects (*i.e.*, images) of an HTML document (the alleged "video asset") may hypothetically be locally received. The HTML document itself, however, is never available from a local storage device. Rather, the HTML document of Starnes must be retrieved from a remote storage device before it

can be determined whether a portion of the objects within the HTML document are available elsewhere. Therefore there can be no teaching, disclosure, or suggestion of at least "determining that a requested video asset is stored locally, is configured to notify the stream session manager to deliver the requested video asset to the local server for transmission by the local server to the requesting user equipment via the access network." Specifically, the requested HTML document disclosed throughout Starnes is first retrieved from the remote content server. This remains the case for "pre-fetch" operations. Only then is the HTML document processed to determine if certain objects of the HTML document (such as images) may be obtained from local storage devices. Specifically, as disclosed in the context of FIG. 1 (reproduced below), Starnes teaches:

> The requesting of the images here is referred to as a pre-fetch for the images because the browser 104 has not yet made the request for the same images. ***More particularly, the HTML document provided by the content server 108 is obtained by the proxy server 102,*** 200, and the proxy server 102, 202 not only forwards the HTML document to the requesting browser 104 but also processes the HTML document in the proxy filter 206 and the observer 210, 300 to identify images. Hence, it is these identified images that can be pre-fetched by the image manager 306 before the requesting browser makes the request for the images ***it identifies in the HTML document***.

(Starnes, Col. 8, lines 14-29, emphasis added).

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Thus, the requested asset (the "HTML document") must always be first retrieved from the remote storage. In view of the foregoing, Applicants respectfully submit that claims 6 and 27 are not taught, disclosed, or suggested by Viswanathan, Ueno and Sato, Starnes, or any other art of record, either individually or in combination. For at least this reason, Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection.

Further, claim 4 recites "**a stream session manager** configured to direct a server to **distribute streams of video assets**," and claims 6 and 27 recite a content manager configured to "notify **the stream session manager** to deliver the requested video asset." There can be no corresponding stream session manager taught in Starnes. Specifically, because some objects are local (*i.e.*, a first image) while others are remotely received from different locations (*i.e.*, the HTML document and other images) and different times, then the reception of the video asset cannot be "streamed" from a stream session manager.

For at least this reason, Applicants respectfully submit that claims 6 and 27 are not taught, disclosed, or suggested by Viswanathan, Ueno and Sato, Starnes, or any other art of record, either individually or in combination. For at least this reason, Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection.

CONCLUSION

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: August 23, 2010

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